

STATE OF IDAHO RETAINED RISK DOCUMENT

STRUCTURE OF THE DOCUMENT

This document consists of three sections:

- I.** General Conditions
- II.** Scope and Authority
- III.** Retained Risk Account Coverages

Section **I**, "General Conditions," applies uniformly to all sections of the Retained Risk Document.

Section **II**, "Scope and Authority," outlines the statutory basis for the State's liability and the enabling legislation that authorizes the Retained Risk Account.

Section **III**, "Retained Risk Account Coverages," as authorized by Title 67, Chapter 57 of the Idaho Code, describes claims eligible for payment out of the Retained Risk Account.

Coverage under this document RRD72002 will become effective on November 1, 2002 and will remain in effect until July 1, 2003 and the annual anniversary thereafter.

STATE OF IDAHO
RETAINED RISK DOCUMENT

TABLE OF CONTENTS

I. GENERAL CONDITIONS	1
A. COVERED ENTITY	1
B. COVERAGE TERRITORY:	3
C. COVERED ENTITY'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM, OR SUIT:	3
D. SUBROGATION:	3
E. CHANGES:	4
F. CONCEALMENT OR FRAUD:	4
G. NON-WAIVER:	4
H. OTHER INSURANCE:	4
I. DEFINITIONS	4
II. SCOPE AND AUTHORITY	9
A. BACKGROUND	9
B. SUMMARY OF IDAHO TORT CLAIMS ACT PROVISIONS	9
III. RETAINED RISK ACCOUNT COVERAGE	13
A. COMPREHENSIVE GENERAL LIABILITY	14
1. COVERAGE	14
2. EXCLUSIONS	14
B. COMPREHENSIVE AUTOMOBILE LIABILITY	19
C. ERRORS AND OMISSIONS – COVERAGE E	20
1. COVERAGE	20
2. DEFINITIONS APPLICABLE TO THIS SECTION	20
3. EXCLUSIONS	20
D. ADVERTISING INJURY LIABILITY – COVERAGE F	22
1. COVERAGE	22
2. EXCLUSIONS	22
E. MEDICAL MALPRACTICE LIABILITY – COVERAGE G	23
1. COVERAGE	23
2. DEFINITIONS APPLICABLE TO THIS SECTION:	23
3. EXCLUSIONS	23

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

I. GENERAL CONDITIONS

A. COVERED ENTITY

1. As respects the coverage afforded under the terms of this document, **Covered Entity** means the following:
 - a) State Of Idaho, including: its offices, departments, divisions, boards, commissions, institutions, or agencies.
 - b) State of Idaho Public Health Districts.
 - c) State of Idaho universities and colleges, (except coverage does not apply to North Idaho Junior College and the College of Southern Idaho, any university or college newspaper, social fraternity or sorority) and
 - (1) **Students**; however, this coverage only applies to students while under the direct supervision of, and assisting, the Covered Entity teaching or administrative staffs in the performance of their teaching or administrative work, or while acting within the scope of their duties as elected officers or officially appointed positions serving the associated student body;
 - (2) **Students** enrolled in an **Academic Practicum** experience offered by or through the covered universities and colleges;
 - (3) **Advisors** to authorized **student** groups at covered colleges and universities; however, this coverage shall be excess over any applicable insurance;
 - (4) **Student Groups** that are approved by the covered universities/colleges and are included in the schedule on file with the Office of Insurance Management.
 - d) Any other entity under the direct supervision or control of the State of Idaho.
 - e) Any past or present elected or appointed officer, member of the boards, committees, commissions or governing bodies of the State of Idaho, while acting within the scope of their duties as such and/or the spouse of any such officer or member acting in the same scope of activities.

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

- f) Any **Employee**, faculty member, or **Authorized Volunteer** of the **Covered Entity** while acting within the scope of their duties as such.
- g) Foundations, associations, guilds and auxiliaries, and non-profit corporations and their employees, directors and officers while operating for the benefit of the State of Idaho.
- h) State appointed foster parents, with respect to:
 - (1) Acts of their wards, and
 - (2) Injury alleged by the ward's natural parents. This coverage shall be excess over any applicable insurance.
- i) As respects Coverage C&D Comprehensive **Automobile** Liability, any person legally responsible for the use of an **Automobile** owned, borrowed or hired for use by a **Covered Entity**, provided the use of the **Automobile** is furthering a State objective and with the permission of the **Covered Entity**; but with respect to a **Non-owned Automobile** this coverage shall be excess over any other valid and collectible insurance. But Insured under this paragraph does not include:
 - (1) Any person or organization (other than an **Covered Entity**) or their agent or employee, operating an **Automobile** repair shop, public garage, sales agency, service station, or public parking place, with respect to an **Accident** arising out of the operation thereof;
 - (2) The owner of any hired or borrowed **Automobile** or any employee of that owner.
- j) The **IDAHO STATE BUILDING AUTHORITY**. The coverage afforded to the Idaho State Building Authority is limited to the activities arising out of the design, construction, operation and maintenance of facilities provided to the State of Idaho through the Idaho State Building Authority and limited to the following:
 - (1) Comprehensive general liability, Coverages A and B;
 - (2) Advertising injury liability, Coverage F; and
 - (3) Errors or omissions liability, Coverage E.

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

B. COVERAGE TERRITORY:

The United States of America, its territories or possessions, or Canada; or anywhere else in the world, provided the original suit for Damages is brought within the United States of America.

C. COVERED ENTITY'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM, OR SUIT:

1. In the event of an **Occurrence**, the **Covered Entity** shall provide to the Office of Insurance Management written notice containing information with respect to the time, place and circumstances of the **Occurrence**, the names and addresses of involved parties and witnesses. The **Covered Entity** shall promptly take all reasonable steps to prevent additional **Bodily Injury** or **Property Damage** arising from the same or similar conditions at the location where the initial **Bodily Injury** or **Property Damage** occurred. Failure to take such preventive measures shall constitute a breach of this condition.
2. If claim is made or suit is brought against the State of Idaho and another **Covered Entity**, the **Covered Entity** shall immediately forward to the Office of Insurance Management every demand, notice, summons or other process received.
3. The **Covered Entity** shall cooperate with the Office of Insurance Management and upon its request assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Covered Entity**. The **Covered Entity** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Covered Entity** shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for initial treatment at the scene.

D. SUBROGATION:

In the event of any payment under coverages provided for under this document, the Retained Risk Account shall be subrogated to all the **Covered Entity's** rights of recovery therefore against any person or organization and the **Covered Entity** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Covered Entity** shall do nothing after loss to prejudice such rights.

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

E. CHANGES:

Changes made to this document are effective immediately and notice will be provided thereupon to **Covered Entities**.

F. CONCEALMENT OR FRAUD:

The coverages afforded by this document may be voided if the **Covered Entity** conceals material facts regarding an Occurrence, loss or claim.

G. NON-WAIVER:

This document shall not be read or interpreted to reduce or alter the rights and responsibilities of the **Covered Entities** and the Office of Insurance Management as afforded by law.

H. OTHER INSURANCE:

Coverage shall at all times be excess over any other insurance (including any insurance naming the **Covered Entity** as "additional insured") available to the **Covered Entity** as to an **Occurrence/Accident** covered by this document (other than insurance that is expressly and specifically excess of the limits of this document), and nothing in this document or any other document shall be construed to require this document to contribute with, or subject this document to the terms, conditions or limits of any other insurance. There is no duty to defend or pay any defense costs of any claim that any other insurer has a duty to defend.

I. DEFINITIONS

The following definitions apply to all sections of this document, unless more specifically defined in another section.

1. **ACADEMIC** means of or relating to a formal program of study offered by the **Covered Entity** which, when successfully completed, results in the issuance of a diploma or similar document of completion.
2. **ACCIDENT** means an accidental happening, including continuous or repeated exposure to substantially the same conditions which results in bodily injury or property damage. All such exposure to substantially the same conditions will be considered as arising out of one accident.
3. **ADVISOR** means an individual who is approved and supervised by a covered college or university with respect to an authorized student group.

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

4. **AUTHORIZED VOLUNTEER** means a person who is authorized to perform services for any **Covered Entity**, but only while acting within the scope of his duties as such.
5. **AUTOMOBILE** means a land motor vehicle; trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include **Mobile Equipment**.
6. **BODILY INJURY** means physical injury, sickness, disease or death sustained by any person.
7. **DAMAGES** means monetary compensation or indemnity, which may be recovered by any individual or claimant that has suffered loss; and, includes death, care and loss of services resulting from **Personal Injury**, and loss of use of property resulting from **Property Damage**.

Damages shall not include civil or criminal fines or penalties or restitution orders; or any award of wages, salary or benefits or their equivalent or the interest on any of the above.

8. **DECLARATORY ACTION/RELIEF/JUDGMENT** means:
 - a) A statutory process and remedy for the determination of a justifiable controversy where plaintiff is in doubt as to his legal rights;
 - b) A binding adjudication of the rights and status of litigants even though no consequential relief or monetary damage is awarded; or
 - c) A declaration of rights in a controversy.
9. **DEFINED CONTRACT** means any written agreement under which the **Covered Entity** assumes the liability of others for **Bodily Injury** or **Property Damage**.
10. **EMPLOYEE** means any past or present full or part time officer, employee or servant of the **Covered Entity**, including elected or appointed officials, but only while working for or on behalf of the **Covered Entity**.
11. **HIRED AUTOMOBILE** means an **Automobile** not owned by the **Covered Entity** which is used under contract on behalf of, or loaned to, the **Covered Entity**, provided such **Automobile** is not owned by

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

an Employee or agent of the **Covered Entity** who is granted an operating allowance of any sort for the use of such **Automobile**.

12. **MOBILE EQUIPMENT** means a land vehicle (including any machinery or apparatus attached thereto) whether or not self-propelled, that is: (i) maintained for use exclusively on premises owned by or rented to the **Covered Entity**, including the ways immediately adjoining, or (ii) designed for use principally off public roads, or (iii) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle; power cranes, shovels, loaders, diggers and drills, concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well-servicing equipment.
13. **NON-OWNED AUTOMOBILE** means an **Automobile** that is neither an **Owned** nor **Hired Automobile**, only while such **Automobile** is being used in the business of the **Covered Entity**.
14. **OCCURRENCE** means an **Accident**, event, or a continuous or repeated exposure to conditions, which causes **Personal Injury** or **Property Damage**, **Advertising Injury**, or **Malpractice** during the coverage period.
 - a) All **Personal Injury** or **Property Damage** arising out of the continuation or repetition of substantially the same condition, or the same proximate cause shall be considered as arising out of one "**Occurrence**."
 - b) With respect to **Advertising Injury**, and only for the offenses specified in Coverage F. **Advertising Injury**, all Damages arising out of substantially the same advertising injury regardless of frequency, repetition, the number or kind of offenses, or number of claimants, will be considered as arising out of one **Occurrence**;
 - c) As respects a series of related **Occurrences** by one or more **Covered Entities**, the occurrence shall be deemed to have been committed at the time of the first such **Occurrence** or alleged occurrence. However, as respects a series of related occurrences by one or more **Covered Entities** taking place over more than one coverage period, the **Occurrence** shall be deemed to have been committed during the first coverage period in which the first

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

of such occurrences or alleged occurrences took place and only that document's (because "this" document might not be the same one applicable when the FIRST of such occurrences took place) limit of liability shall apply.

15. **OWNED AUTOMOBILE** means an automobile titled in the name of a **Covered Entity**.
16. **PERSONAL INJURY** means (i) **bodily injury**, disability, shock, humiliation, mental anguish and mental injury resulting from bodily injury; (ii) false arrest, detention or imprisonment or malicious prosecution; (iii) libel or slander, disparagement, violation of an individual's rights of privacy; (iv) wrongful entry or eviction, or other invasion of the right of private occupancy; (v) discrimination, humiliation, sexual harassment or wrongful dismissal or discharge; (vi) assault or battery committed with reasonable force for the purpose of protecting persons or property from injury or death or incident to an arrest; (vii) false or improper service of process; or (viii) violation of property right, privileges or immunities secured by the constitution and laws of the United States of America or the States.
17. **POLLUTANT(S)** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkali, chemicals, metals and waste. Waste includes materials to be reconditioned, reclaimed or recycled.
18. **PRACTICUM** means a course of study involving practical application of previously studied theory approved by and under supervision of the covered colleges and universities of the State of Idaho.
19. **PROPERTY DAMAGE** means injury to or destruction of tangible property, including the loss of use of such property.
20. **STUDENT** means a covered State of Idaho university/college **Student**:
- a) Registered and participating in credit bearing **academic** or applied technology college courses; or
 - b) Who is participating in a Practicum as defined this document.
- A **Student** is not:
- a) A participant in a vocational rehabilitative type re-training or job placement/enhancement program; or
-

STATE OF IDAHO
RETAINED RISK DOCUMENT

I. GENERAL CONDITIONS

- b) A participant in an adult basic educational community type of program or course; or
- c) A participant in a “community interest” type of program or course.

STATE OF IDAHO
RETAINED RISK DOCUMENT

II. SCOPE AND AUTHORITY

II. SCOPE AND AUTHORITY

A. BACKGROUND

This Retained Risk Document is based upon the provisions of the Idaho Tort Claims Act (ITCA) and the powers and duties granted to the Department of Administration by Idaho Code Title 67, Chapter 57.

B. SUMMARY OF IDAHO TORT CLAIMS ACT PROVISIONS

The following is a summary of pertinent applicable provisions in the Idaho Tort Claims Act. Text is not verbatim nor all inclusive.

1. Liability of governmental entities: I. C. Sec. 6-903

Except as provided in the act, every governmental entity is subject to liability for money damages arising out of its negligence or otherwise wrongful acts or omissions and those of its employees acting within the course and scope of their employment or duties where the governmental entity if a private person or entity would be liable for money damages under the laws of the state of Idaho.

A governmental entity shall provide a defense to its employee and be responsible for the payment of any judgment on any claim or civil lawsuit against an employee for money damages arising out of any act or omission within the course and scope of his employment.

2. Exceptions to governmental liability: Idaho Code § 6-904

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent shall not be liable for any claim which:

- a) Arises out of any act or omission of an employee of the entity exercising ordinary care, in reliance upon or the execution or performance of a statutory or regulatory function, ... or based upon the exercise or performance or failure to exercise or perform a discretionary function or duty;
- b) Arises out of the imposition or establishment of quarantine;
- c) Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

STATE OF IDAHO
RETAINED RISK DOCUMENT

II. SCOPE AND AUTHORITY

- d) Arises out of the activities of the Idaho National Guard when engaged in training or duty;
- e) Or when engaged in combatant activities during a time of war;
- f) Arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence or civil disturbances;
- g) Arises out of a plan for construction or improvement to the highways ... where such plan or design is prepared in substantial conformance with the engineering or design standards at the time;

3. Exceptions to governmental liability. Idaho Code § 6-904A.

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, shall not be liable for any claim which:

- a) Arises out of the assessment or collection of any tax or fee.
- b) Arises out of injury to a person or property by a person under supervision, custody or care of a governmental entity or by or to a person who is on probation or parole or any work-release program, or by or to a person receiving services from a mental health center, hospital or similar facility.

4. Exceptions to governmental liability. Idaho Code § 6-904B.

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, shall not be liable for any claim which:

- a) Arises out of the detention of any goods or merchandise by any law enforcement officer.
- b) Arises out of the cancellation or rescission, or the failure to cancel or rescind, and motor vehicle registration and license plates for failure of the owner to verify or maintain motor vehicle liability insurance coverage.

STATE OF IDAHO
RETAINED RISK DOCUMENT

II. SCOPE AND AUTHORITY

- c) Arises out of the issuance, denial, suspension or revocation of, or failure or refusal to issue, deny, suspend, or revoke a permit, license, certificate, approval, order or similar authorization.
- d) Arises out of the failure to make an inspection, or the making of an inadequate inspection of any property, real or personal, other than the property of the governmental entity performing the inspection.
- e) Arises out of any act or omission providing or failing to provide medical care to a prisoner, inmate or person in the custody of any city, county or state jail, detention center or correctional facility.
- f) Arises out of a decision of the state commission of pardons and parole or its executive director when carrying out the business of the commission.

5. Limit of liability: Idaho Code § 6-926

The combined aggregate liability of a governmental entity and its employees for damages, costs and attorney fees under this chapter, on account of personal injury, death, or property damage, or other loss as the result of any one (1) occurrence or accident regardless of the number of persons injured or the number of claimants, shall not exceed and is limited to five hundred thousand dollars (\$500,000), unless the governmental entity has purchased applicable, valid, collectible liability insurance coverage in excess of said limit, in which event the controlling limit shall be the remaining available proceeds of such insurance.

6. No punitive damages: Idaho Code § 6-918

Governmental entities and their employees shall not be liable for punitive damages on any claim allowed under the provisions of this act.

7. Retained Risk Account Authority

In Title 67 Chapter 57 of the Idaho Code, the Department of Risk Management is authorized to utilize the Retained Risk Account for “the payment of losses not otherwise insured and suffered by the state as to property and risks which at the time of the loss were eligible for such payment under guidelines theretofore issued by the Director of the Department of Administration.” (IC 67-5776 (1))

STATE OF IDAHO
RETAINED RISK DOCUMENT

II. SCOPE AND AUTHORITY

The Director has developed this coverage document “as to properties and risks eligible for payment out of the retained risk account, and as to making of claim and proof of loss.” (IC 67-5776(3))

Coverage under this document RRD72002 will become effective on November 1, 2002 and will remain in effect until July 1, 2003 and annually thereafter or until cancellation.

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

III. RETAINED RISK ACCOUNT COVERAGE

COMPREHENSIVE GENERAL LIABILITY – Coverage A & B

A – Personal injury

B – Property damage

COMPREHENSIVE AUTOMOBILE LIABILITY – Coverage C & D

C – Bodily injury

D – Property damage

ERRORS OR OMISSIONS – Coverage E

ADVERTISING LIABILITY – Coverage F

MEDICAL MALPRACTICE LIABILITY – Coverage G

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

A. COMPREHENSIVE GENERAL LIABILITY

PERSONAL INJURY – Coverage A
PROPERTY DAMAGE – Coverage B

1. COVERAGE

The Retained Risk Account, through the Office of Insurance Management, subject to the terms and conditions of this document, will pay on behalf of the **Covered Entity**, all sums which the **Covered Entity** shall be legally obligated to pay as **Damages** because of **Personal Injury** (Coverage A) or **Property Damage** (Coverage B) to which coverage applies, arising out of an **Occurrence**, and the Retained Risk Account shall have the right and duty to defend any suit against the **Covered Entity** seeking **Damages** on account of such **Personal Injury** or **Property Damage**, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Retained Risk Account shall not be obligated to pay any claim or judgment, after the Retained Risk Account's liability limit for the claim has been exhausted by payment of judgments or settlements.

2. EXCLUSIONS

All Coverage Parts (A, B, C, D, E, F, and G) included in this Retained Risk Document are subject to the following exclusions except as otherwise indicated.

This coverage does not apply to:

- a) Liability assumed by the **Covered Entity** under any contract or agreement, except a **Defined Contract**;
- b) Any obligation for which the **Covered Entity** or any carrier as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- c) **Bodily injury** to any **Employee** of the **Covered Entity** arising out of and in the course of his employment by the **Covered Entity**;
- d) **Property Damage** to property owned, being transported, occupied or rented by, or within the care, custody or control of any

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

- Covered Entity** or as to which the **Covered Entity** is for any purpose exercising physical control.
- e) **Property Damage** to premises alienated by the **Covered Entity** arising out of such premises or any part thereof;
 - f) **Property Damage** to work performed by or on behalf of the **Covered Entity** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
 - g) Any claims of liability or **Damages** arising out of, or in any way connected with, eminent domain proceedings, condemnation proceeding, inverse condemnation, adverse possession, any planning or zoning proceedings or public nuisance, however characterized, whether the liability accrues directly against the **Covered Entity** or by virtue of any agreement entered into by the **Covered Entity** or on the **Covered Entity's** behalf;
 - h) Any dishonest, fraudulent, criminal, or malicious act;
 - i) Non-monetary **Damages**, fines or penalties:
 - (1) Any **Damages** arising out of claims or demands for injunctive or declaratory relief or any derivatives, including actions therefrom; or
 - (2) Any **Damages**, including those arising out of an action, claim, suit or demand seeking relief or redress in any form other than money Damages; or
 - (3) Any expenses, fees or costs which the **Covered Entity** may become obligated to pay as a result of an adverse judgment for injunctive or declaratory relief.
 - j) Any liability resulting from the hazardous properties of nuclear materials, including nuclear reaction, radiation or contamination, arising out of the operations of any nuclear reactor or any facility used for separating the isotopes of uranium or plutonium or used for processing spent nuclear fuel;
 - k) **Personal Injury** arising out of the willful violation of a penal statute or ordinance;

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

- l) For recovery of wages, salary or benefits or their equivalent, or for interest or penalties thereon;
- m) Any attorney fees awarded by a court unless money **Damages** payable because of a personal injury or advertising injury are also awarded.
- n) Any claim for benefits due or to become due under the terms of any employee benefit plan.
- o) In-flight operations of aircraft by or in the interest of the **Covered Entity**. The term in-flight as used here means the period from the time the aircraft moves forward in taking off or in attempting to take off until it has completed its landing run.
- p) To any liability for **Damages**:
 - (1) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** anywhere in the world;
 - (2) For any loss, cost or expense arising out of any governmental direction or request that the **Covered Entity**, or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize or assess the effects of **Pollutants**; or
 - (3) For any loss, cost or expense, including but not limited to costs of investigation or attorneys' fees, incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize **Pollutants**.
 - (4) The exclusions set forth in items (1), (2). or (3) above do not apply if said discharge, dispersal, release or escape of **Pollutants** meets all of the following conditions:
 - (i) It was accidental and neither expected nor intended by the **Covered Entity**; and
 - (ii) It was demonstrable as having commenced on a specific date during the term of this policy; and
 - (iii) Its commencement became known to the Covered Entity within seven (7) calendar days; and

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

- (iv) Its commencement was reported in writing to the Office of Insurance Management within thirty (30) calendar days of becoming known to the Covered Entity; and
 - (v) Reasonable effort was expended by the Covered Entity to terminate the discharge, dispersal, release or escape of pollutants as soon as conditions permitted.
- (5) Nothing contained in this exclusion will operate to provide any coverage with respect to:
- (i) Any site or location principally used by the Covered Entity, or by others on the Covered Entity's behalf, for the handling, storage, disposal, dumping, processing or treatment of waste material;
 - (ii) Any fines or penalties;
 - (iii) Any clean up costs ordered by the SuperFund Program, or any federal, state or local governmental authority. However, this specific exclusion (3). will not serve to deny coverage for third party clean up costs otherwise covered by this policy simply because of the involvement of a governmental authority;
 - (iv) Acid rain;
 - (v) Clean up, removal, containment, treatment, detoxification or neutralization of Pollutants situated on premises the Covered Entity owns, rents or occupies at the time of the actual discharge, dispersal, seepage, migration, release or escape of said Pollutants; or
 - (vi) Water pollution caused by oil or its derivatives.
- (6) This exclusion does not apply to any Personal Injury, Property Damage or any other liability caused by the following:
- (i) Fire fighting activities, including training burns, intentional demolition or burns for the purpose of limiting a fire, or the discharge of Pollutants for the purpose of controlling a fire;

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

- (ii) Fire department or hazardous response team responding to a contamination caused by a third-party unrelated to the insured;
- (iii) Law enforcement use of mace, oleoresin capsicum (O.C. or pepper gas) or tear gas;
- (iv) Arising out of heat, smoke, or fumes from a hostile fire (hostile fire means a fire which becomes uncontrollable or breaks out from where it was intended to be); or
- (v) Direct and immediate **Personal Injury** or direct and immediate **Property Damage** arising out of operations involving pesticide or herbicide application at or from any site or location on which the **Covered Entity** or any contractor or subcontractor working directly or indirectly on the **Covered Entity's** behalf are performing operations if the operations performed meet all standards of any statute, ordinance, regulation, or license requirements of any federal, state or local government which apply to those operations.
- (vi) Directly and immediately by **Pollutants** when a container which holds such **Pollutants**, and is being transported by the **Covered Entity's Automobile** or **Mobile Equipment**, is accidentally upset or accidentally overturned as a result of the operation of the insured's **Automobile** or **Mobile Equipment**, and the release of the **Pollutants** is caused directly and immediately by such upset or overturn;
- (vii) By fuels, lubricants, fluids, exhaust gases or other similar **Pollutants** that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the **Covered Entity's Automobile** or **Mobile Equipment**, if the **Pollutants** are accidentally released directly from an **Automobile** or **Mobile Equipment** part designed by its manufacturer to hold, store, receive or dispose of such **Pollutants**.

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

B. COMPREHENSIVE AUTOMOBILE LIABILITY

BODILY INJURY – Coverage C
PROPERTY DAMAGE – Coverage D

The Retained Risk Account, through the Office of Insurance Management, subject to the terms and conditions of this coverage, will pay on behalf of the Covered Entity, all sums which the Covered Entity shall be legally obligated to pay as Damages because of Bodily Injury (Coverage C.) or Property Damage (Coverage D.) arising out of an Accident during the coverage period and resulting from the ownership, maintenance, use, including loading or unloading of any Automobile. Retained Risk Account shall have the right and duty to defend any suit brought against the Covered Entity seeking money Damages on account of such Bodily Injury or Property Damage, even if any of the allegations of the suit are groundless, false, or fraudulent; and may make such investigation and settlement of any claim or suit as it deems expedient, but the Retained Risk Account shall not be obligated to pay any claim or judgment after the applicable limit of the Retained Risk Account's liability limit for the claim has been exhausted by payment of judgments or settlements.

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

C. ERRORS AND OMISSIONS – COVERAGE E

1. COVERAGE

The Retained Risk Account, through the Office of Insurance Management, will pay on behalf of the **Covered Entity** all **Damages** which the **Covered Entity** shall become legally obligated to pay resulting from any claim made against the **Covered Entity** arising out of any **Wrongful Act (as defined herein)**, of the **Covered Entity**. The Retained Risk Account shall have the right and duty to defend any suit brought against the **Covered Entity** seeking **Damages** on account of an alleged or actual **Wrongful Act** even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim settlement as it deems expedient, but the Retained Risk Account shall not be obligated to pay any claim or settlement after the applicable limit of liability has been exhausted by payment of judgments or settlements.

2. DEFINITIONS APPLICABLE TO THIS SECTION

WRONGFUL ACT means any actual or alleged error, omission, act, misstatement, neglect or breach of duty in the discharge of duties by or on behalf of a **Covered Entity**. All claims involving the same **Wrongful Act** or a series of continuous or interrelated **Wrongful Acts**, by one or more **Covered Entities**, will be considered as arising out of one **Wrongful Act**.

As respects a series of related **Wrongful Acts** by one or more **Covered Entities**, the **Wrongful Act** shall be deemed to have been committed at the time of the first such act or alleged act. This coverage does not apply to **Wrongful Acts** committed prior to or after the coverage period. However, as respects a series of related **Wrongful Acts** by one or more **Covered Entities** taking place over more than one coverage period, the **Wrongful Acts** shall be deemed to have been committed during the first coverage period in which the first of such acts or alleged acts took place and only this documents' Limit of Liability shall apply.

3. EXCLUSIONS

This coverage does not apply to such coverage as is provided for under Coverage A, B, C, D, F or G.

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

The exclusions applicable to Comprehensive General Liability coverage A and B also apply to this coverage, except the following exclusions do not apply:

- a) **Property Damage** to premises alienated by the **Covered Entity** arising out of such premises or any part thereof;
- b) Any claims of liability or **Damages** arising out of, or in any way connected with eminent domain proceedings, condemnation proceeding, inverse condemnation, adverse possession, any planning or zoning proceedings or public nuisance, however characterized, whether the liability accrues directly against the **Covered Entity** or by virtue of any agreement entered into by the **Covered Entity** or on the **Covered Entity's** behalf;
- c) Any claim for benefits due or to become due under the terms of any employee benefit plan.

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

D. ADVERTISING INJURY LIABILITY – COVERAGE F

1. COVERAGE

The Retained Risk Account through the Office of Insurance Management, will pay on behalf of the **Covered Entity** all money **Damages** which the **Covered Entity** is legally obligated to pay because of advertising injury sustained by a third party arising out of one or more of the following offenses:

- a) Oral or written publication of material that libels or slanders a person or organization or disparages a person's or organization's goods, products or services;
- b) Written or oral publication of material that violates a person's right of privacy;
- c) Infringement of copyrighted advertising materials, titles or slogans; or
- d) Misappropriation of advertising ideas or style of doing business.

The Retained Risk Account, through the Office of Insurance Management, shall have the right and duty to defend any suit brought against the **Covered Entity** seeking **Damages** on account of such advertising injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Retained Risk Account shall not be obligated to pay any claim or settlement after the applicable limit of liability has been exhausted by payment of judgments or settlements

2. EXCLUSIONS

The following additional exclusions apply to this Coverage Part.

This **Advertising Injury** coverage does not apply to:

- a) The failure of goods, products, or services to conform with advertised quality or performance; or
- b) The wrongful description of the price of products, goods, or services; or breach of contract.

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

E. MEDICAL MALPRACTICE LIABILITY – COVERAGE G

1. COVERAGE

The Retained Risk Account, through the Office of Insurance Management, will pay on behalf of the **Covered Entity** all sums which the **Covered Entity** shall become legally obligated to pay as **Damages** because of an **Occurrence** arising out of **Malpractice** as herein defined. The Retained Risk Account, through the Office of Insurance Management, shall have the right and duty to defend any suit against the **Covered Entity** seeking **Damages** on account of such injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claims or suit as it deems expedient, but the Retained Risk Account shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Retained Risk Account's liability has been exhausted by payment of judgments or settlements.

2. DEFINITIONS APPLICABLE TO THIS SECTION:

- a) **MALPRACTICE** means breach of applicable standard of care in providing **Professional Services**.
- b) **PROFESSIONAL SERVICES** means the furnishing of professional healthcare services including the furnishing of food, beverages, medications or appliances in connection with such services, the postmortem handling of human bodies, and services as a member of a formal accreditation, standards review or similar professional board or committee, including executing the directives of such board or committee.

3. EXCLUSIONS

The following additional exclusions apply to this Coverage Part.

Malpractice liability does not apply to:

- a) Liability of the **Covered Entity** if an individual, for personal acts or omissions of a professional nature if such individual is required to have a license in the state in which they are practicing and has failed to secure such license;
- b) Liability of the **Covered Entity** if an individual, for personal acts or omissions of a professional nature outside the course and scope

STATE OF IDAHO
RETAINED RISK DOCUMENT

III. RETAINED RISK ACCOUNT COVERAGE

of employment by the **Covered Entity**, not involving an emergency situation;

- c) Liability assumed by the **Covered Entity** under any agreement guaranteeing the result of any treatment.